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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-32

[CGD05-04-186]

RIN 1625-AA00

Safety Zone; Chesapeake Bay, Hampton Roads, James River, VA.

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the M/V DEL MONTE, in approximate position 36°06'N, 076°38'W while conducting explosive testing. This action is intended to restrict vessel traffic on the James River, within a 1250-foot radius of the vessel. The safety zone is necessary to protect mariners from the hazards associated with the testing being conducted. Entry into this zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representative.

DATES: This temporary final rule is effective on September 20, 2004 at 12:00 p.m. through September 30, 2004 at 8:00 p. m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05-04-186 and are available for inspection or copying at USCG Marine Safety Office Hampton Roads, 200 Granby Street, Suite 700, Norfolk, Virginia, 23510 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Erik Wozniak, project officer,
USCG Marine Safety Office Hampton Roads, telephone number (757) 668-5560.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. It is impracticable and contrary to public interest to delay in publishing the rule. The event will take place between 12:00 pm 20 September 2004 through 8:00 p.m. 30 September 2004 and immediate action is necessary to protect boaters in the area. Under 5 U.S.C. 553(d)(3) and for the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Background and Purpose

The Coast Guard is establishing a temporary safety zone encompassing the M/V DEL MONTE in approximate position 36°06'N, 076°38'W. The safety zone will restrict vessel traffic on a portion of the James River, within a 1250-foot radius of the M/V DEL MONTE. The United States Navy will be conducting explosive testing during this time. The safety zone is necessary to protect mariners from the hazards associated with the explosive testing.

The safety zone will be effective from 12:00 p.m. eastern time, September 20, 2004 to 8:00 p.m. eastern time, September 30, 2004. Entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representative. Public notifications will be made prior to the transit via marine

information broadcasts.

Regulatory Evaluation

This temporary final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS) .

We expect the economic impact of the rule to be so minimal that a full Regulatory Evaluation of the regulatory policies and procedures of the DHS is unnecessary. Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) the COTP may authorize access to the safety zone; (ii) the safety zone will be in effect for a limited duration; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. section 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities:
the owners and operators of vessels intending to transit or anchor within 1250 feet of the
M/V DEL MONTE in approximate position 36°06'N, 076°38'W from 12:00 p.m. eastern
time, September 20, 2004 to 8:00 p.m. eastern time, September 30, 2004.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under FOR FURTHER INFORMATION CONTACT for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that

may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test

methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, the rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction, from further environmental documentation. A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

Part 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U. S. C. Chapter 701; 50 U.S.C 191 and 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; and Department of Homeland Security Delegation No. 0170.1

2. Add temporary section 165.T05-186 to read as follows:

165.T05-186 Safety Zone; Chesapeake Bay, Hampton Roads and James River, VA

(a) Location. The following area is a safety zone: All waters of the James River within a 1250-foot radius of the M/V DEL MONTE in approximate position 36°06'N, 076°38'W. in the Captain of the Port, Hampton Roads zone as defined in 33 CFR § 3.25-10.

. (b) Definitions:

Captain of the Port. Any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) Regulations:

(1) In accordance with the regulation in 165.23 of this part, entry into the zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia, or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of the safety zone shall:

(i) Stop the vessel immediately upon being directed to by any commissioned, warrant or petty officer on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel that is displaying a U.S. Coast Guard Ensign.

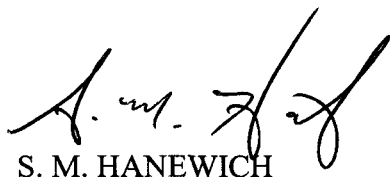
(3) The Captain of the Port, Hampton Roads and the Command Duty Officer at the Marine Safety Office, Norfolk, Virginia can be contacted at (757) 668-5555 or (757) 638-6642.

(4) The Coast Guard vessels enforcing the safety zone can be contacted on VHF_FM 13 and 16.

(d) Effective Dates: This regulation will be effective on September 20, 2004 at 12:00 p.m. through September 30, 2004 at 8:00 p.m.

Dated:

9/20/04

A handwritten signature in black ink, appearing to read "S. M. HANEWICH", written over the printed name.

S. M. HANEWICH

Commander, U.S. Coast Guard

Acting Captain of the Port Hampton Roads